

APPEAL NO. 021494  
FILED JULY 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 3, 2002. The hearing officer determined that the compensable injury of \_\_\_\_\_, does not include an injury to the cervical spine. The appellant (claimant) appeals the determination on sufficiency grounds. The respondent (carrier) asserts that the claimant's appeal is untimely and, in the alternative, urges affirmance.

DECISION

Affirmed.

We first address the carrier's assertion that the claimant's appeal is untimely. A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Section 410.202(a) and (d). Texas Workers' Compensation Commission (Commission) records indicate that the hearing officer's decision was mailed to the claimant on May 17, 2002; the claimant was deemed to have received the decision on May 22, 2002, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)). The last date for the claimant to timely file an appeal was June 13, 2002. The claimant's appeal was stamped as received by the Commission's Chief Clerk of Proceedings on that date. The appeal, therefore, is timely.

The hearing officer did not err in determining that the compensable injury does not include an injury to the cervical spine. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant asserts error in the hearing officer's exclusion of the first page of Claimant's Exhibit Nos. 2 and 3. The claimant also asserts that the hearing officer erred in allowing testimony regarding an alleged automobile accident involving the claimant after the date of the compensable injury. To obtain a reversal based on such error the claimant must show that not only was the admission of the documents error but that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In this instance, the hearing officer determined that the challenged exhibits could have been obtained earlier through the exercise of due

diligence. She did not abuse her discretion in so finding and, as such, she did not err in excluding the exhibits. We find no merit in the assertion that it was error for the hearing officer to have excluded the exhibits to which the carrier objected but to have admitted "later reports of the same doctor which were subsequently exchanged." We note that the carrier did not object to the admission of the exhibits referenced in this argument; thus, it is not surprising that the hearing officer admitted those exhibits. Finally, we consider the assertion that the hearing officer erred in permitting questioning about a automobile accident report after having sustained an objection to the report based on failure to exchange. A review of the record reveals that the claimant was questioned about the accident on cross-examination, which is certainly permissible, and then based upon her responses to the questions, the report was used for purposes of refreshing her recollection and for purposes of impeachment. Accordingly, we cannot agree that the hearing officer erred in allowing the testimony about the excluded exhibit.

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 330, ONE COMMODORE PLAZA  
AUSTIN, TEXAS 78701.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge